



# Estate Planning for Special Needs Families

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MEREDITH HILTON LAW

# Why Special Needs Planning?

Planning for a loved one with special needs is about

- Enhancing the person's quality of life to the maximum extent possible
- Protecting them only as much as necessary to not limit or restrict their potential.

# Benefits of Special Needs Planning

1. Provide Financial Security and Management of Assets
2. Leverage Public Benefits and ensure continued eligibility
3. Select a Team to Provide Lifetime Advocacy
4. Plan for Medical, Housing and Caregiving Needs
5. Protect Beneficiary from Predators
6. Achieve the goals and dreams of individuals with disabilities

## What Benefits are We Trying to Protect?

### MEDICAID

#### SUPPLEMENTAL SECURITY INCOME (SSI)

- Income subsidy for those persons with low income and very few assets
- Focused on food and shelter
- Automatic Medicaid to help cover medical expenses.

Generally, must have less than \$2,000 to qualify.

# What is a Special Needs Trust?

Trustee has sole discretion to provide distributions – Beneficiary cannot have any control over assets.

Distributions are made to third parties for benefit of beneficiary, but not made directly to the beneficiary.

Preserves eligibility for govt benefits – Assets are not counted as a resource no matter how much is in the trust.

# Goals: Benefits and General Support

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Beneficiary may now rely (or in the future rely) on government benefits that have financial-related requirements

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Beneficiary may need assistance managing assets regardless of eligibility for benefits

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Extends life of assets and provides for a higher quality of life

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Protects assets from creditors and predators

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# Other Arrangements - Not Recommended

- Outright inheritance – loss of SSI and Medicaid
- Left in non-qualifying trust – loss of SSI and Medicaid
- Disinheritance – no money available for loved one with special needs
- Leaving assets to brothers or sisters with request to take care of sibling
  - Subject to creditors
  - What if they die who then has assets?
  - May not want to take care of sibling if have own family
  - Could be lost in divorce

## “Third Party” Special Needs Trust

Established by a third party -- someone other than the individual with the disability.

If funded with only money from third parties, assets can go to other beneficiaries at death of the individual with the disability

Two Types: (1) “Stand-alone” Trust or  
(2) “Testamentary” Trust





# “Stand Alone” Third Party Special Needs Trust

- In effect immediately
- Trustees and successors get training and experience
- Other family members can also leave an inheritance to the trust



# “Testamentary” Third Party Special Needs Trust

- Will must be probated to get the SNT established
- Cannot be coordinated with other family members' estate plans
- Benefit: Provides flexibility when uncertainty about disability

## “First Party” Special Needs Trust

Used when the individual already has assets in their name.

- Maintains eligibility for public benefits
- Must be for Beneficiary’s sole benefit
- Must be for loved one under age 65
- Payback Provision: State must be reimbursed from the trust for all Medicaid expenses upon death of the individual with special needs

# Achieving a Better Life Experience (ABLE) Account

Issues	ABLE Account
Who can use?	Only persons disabled before age 26
Who can fund?	Anyone, including person with a disability
How many can person have?	One
Who can control?	Person with a disability and likely their legal guardian, conservator, or agent
Who inherits on death of person with disability	Medicaid first, then can go to heirs

# Achieving a Better Life Experience (ABLE) Account

Issues	ABLE Account
How much can fund in a year?	\$15,000 (or annual gift exemption) + additional \$12k of salary
Is funding gift-tax free?	Yes
Is there a cap on how much can be in account?	Yes, currently \$100,000 limitation for SSI recipients and up to \$235,000 for Medicaid
How is income taxed?	No income tax
What type of distributions can be made?	Only “qualified disability expenses” as defined by government

# Pooled Trust

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Set up and administered through a nonprofit

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Can be 1<sup>st</sup> party or 3<sup>rd</sup> party

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Each beneficiary has his or her own sub-account, but all sub-account assets are pooled together for investment purposes

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Fewer setup fees, cheaper than a professional trustee

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Good option for people over 65

# Additional Planning Documents

## Financial Power of Attorney and Advance Directive for Health Care:

- Can be signed by many individuals with disabilities
- Provides extra layer of support
- Sometimes used to avoid guardianship / conservatorship

## Letter of Intent

# Letter of Intent

## Parents Envision Their Loved One's Future

- Important Contacts: Family, Friends, Advocates, Doctors, Therapists
- Medical History + Insurance Information
- Govt. benefits + when/how to reapply
- Social and Emotional Needs
- What type/level of care is needed
- Hopes and Dreams



For questions, please contact  
Meredith Hilton:

Meredith Hilton Law  
5425 Peachtree Pkwy  
Peachtree Corners, GA 30092  
Meredith@HiltonLaw.com  
678-906-4085

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